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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS PATRICK,

Defendant and Appellant.

G052444

(Super. Ct. No. 14WF2607)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Nicholas Patrick was charged with aggravated assault (Pen. Code, § 245, subd. (a)(1); count 1)<sup>1</sup>, domestic battery with corporal injury (§ 273.5, subd. (a); count 2), criminal threats (§ 422, subd. (a); count 3), domestic violence battery (§ 243, subd. (e)(1); count 4), and another count of domestic battery with corporal injury (§ 273.5, subd. (a); count 5). Counts 1 through 3 pertained to an incident on July 7, 2014. Count 4 pertained to an incident on April 24, 2014, and count 5 pertained to an incident on April 22, 2014. Only count 5 is at issue in this appeal. A jury found defendant guilty of simple assault as a lesser included offense in count 1, and of domestic battery with corporal injury as alleged in count 5. The jury could not reach a verdict on counts 2 through 4, so the court declared a mistrial and the People later dismissed those counts. After trial, defendant admitted to five strikes (§§ 667, subds. (d), (e)(2)(A), 1170.12, subds. (b), (c)(2)(A)), two prior serious felonies (§ 667, subd. (a)(1)), and three prison priors (§ 667.5, subd. (b)). For sentencing purposes, the court struck all of the prior serious felonies and all but one of the prison priors. The court sentenced defendant to the low term of two years on count 5, doubled for the strikes (§§ 667, subd. (e)(2)(C) & (e)(1), 1170.12, subd. (c)(2)(C) & (e)(1)), plus an additional year for the prison prior, for a total of five years in state prison. The court suspended imposition of sentence on count 1.

On appeal, defendant contends there was insufficient evidence to support the conviction on count 5. We disagree and affirm.

## FACTS

Defendant lived with his girlfriend Kimberly L. at the Motor Inn in Costa Mesa. Kimberly described their relationship as “chaotic.” She called 911 “quite a few

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<sup>1</sup>

All statutory references are to the Penal Code unless otherwise indicated.

times,” and experienced “several black eyes.” The jury was shown a photograph of Kimberly’s face with a black eye and a bandage, taken on April 24, 2015. Kimberly explained that, two days earlier, on April 22, 2014, defendant had grabbed her phone out of her hand and threw it at her, striking her in the temple and causing her to bleed to the point where the blood was dripping off her elbow. Kimberly did not call anyone at that time. When asked at trial why she did not call, she stated, “Because I felt it was an accident.” This was the incident at issue in count 5.

Kimberly further testified that it was common for defendant to verbally and physically abuse her, and that at times she feared for her life.

Two days after the cell phone incident, Kimberly called 911 and spoke to Costa Mesa Police Officer Monte Peters. She claimed she did so at the behest of a friend who urged her to stick up for herself.<sup>2</sup> Kimberly explained to Officer Peters she had not called the police at the time of the cell phone incident because “defendant had refused to give her her phone.”

## DISCUSSION

Defendant’s sole argument on appeal is that the evidence was insufficient to support the judgment on count 5 because the only evidence showed defendant threw the cell phone at Kimberly and struck her by accident. We disagree.

“In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence — evidence that is reasonable, credible and of solid value — such that a reasonable trier of

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<sup>2</sup>

There was evidence that defendant had physically abused Kimberly that day. However, that evidence pertains to the dismissed charges and is thus omitted from this discussion.

fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “[I]t is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.” (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

Defendant was accused of violating section 273.5, which states, “(a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony . . . .” Subdivision (b) lists, among other victims, the offender’s cohabitant. Subdivision (d) defines “traumatic condition” as “a condition of the body, such as a wound, or external or internal injury, . . . whether of a minor or serious nature, caused by a physical force.”

The jury was not required to credit Kimberly’s testimony that defendant struck her with the cell phone by accident. To begin with, that is a rather implausible claim. Cell phones are not generally accidentally catapulted in the direction of another person’s head. Moreover, the jury was entitled to consider the evidence of defendant’s extensive history of physically abusing Kimberly in assessing whether defendant acted intentionally or by accident. (See Evid. Code, § 1101, subd. (b).) Finally, Kimberly’s testimony that she did not call the police on April 22, 2014, because she believed it was an accident was in tension with her statement to Officer Peters that she did not call the police because defendant refused to return her cell phone. In light of all of these circumstances, the jury was free to reject Kimberly’s testimony that defendant’s actions were accidental and to conclude instead they were intentional.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.